IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.574 of 2007

For Approval and Signature :

HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL

HONOURABLE MR.JUSTICE BHANWAROO KHAN

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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Achla Ram - Appellants

Versus

State of Rajasthan & ors. - Respondents

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Appearance :

Mr. R.K. Soni, for the appellant.

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CORAM:HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL

and

HONOURABLE MR.JUSTICE BHANWAROO KHAN

Date : 17/08/2007

ORAL JUDGMENT

(Per:HONOURABLE THE ACTING CHIEF JUSTICE MR.J.M.PANCHAL)

The instant appeal is directed against order dated November 19, 2005 rendered by the learned Single Judge in S.B. Civil Writ Petition no.4930/2005 by which the prayers made by the appellant (1) to set aside the enquiry report dated August 10, 2001 (2) the order dated May 6, 2002 imposing punishment of reduction of pay scale for a period of three years (3) the appellate order dated December 26, 2003 upholding the order of punishment dated May 6, 2002 and (4) that the appellant be ordered to be exonerated of all the charges, are rejected.

The appellant at the relevant time was discharging duties as Guard Incharge. The Assistant Jailer, Central Jail, Jodhpur by a letter dated October 23, 2000 asked the Reserve Inspector, Police Line, Jodhpur to send the Police guards for admitting the prisoner i.e. Kalu Singh S/o Guman Singh in hospital at 3.30 p.m. The appellant and one constable Ashok Kumar were sent for getting the prisoner admitted in the hospital. On October 24, 2000, the prisoner escaped through the window of the Latrine of the hospital. The case of the appellant is that immediately a search was made with the help of the other guards and in the midnight the prisoner was apprehended. The appellant lodged FIR No.426 with reference to the incident of escape of prisoner from the hospital premises at Pratap Nagar police

station. On November 24, 2000, the appellant and three other guards were served with a charge-sheet for dereliction of duty. The appellant submitted his reply on December 11, 2000. Thereafter enquiry was conducted by the enquiry officer and a enquiry report dated August 10, 2001 was submitted. The appellant was served with a notice dated September 13, 2001 under Article 311(2) of the Constitution and was served with enquiry report dated August 10, 2001. On receipt of notice with the enquiry report dated August 10, 2001, the appellant submitted his reply. However, the competent authority found that the appellant was guilty of dereliction of duty and imposed penalty of reduction of pay scale for a period of three years. Feeling aggrieved, the appellant preferred an appeal before the Inspector General who dismissed the same by order dated December 26, 2001. Thereupon, the appellant invoked extra ordinary jurisdiction of this Court under Article 226 of the Constitution by filing S.B. Civil Writ Petition no.4930/2005. The learned Single Judge has dismissed the same by order dated November 19, 2005 giving rise to the instant appeal.

This Court has heard Mr. R.K. Soni, learned counsel for the appellant and also considered the documents forming part of the petition.

The contention that there was error of judgment on the part of the appellant but no negligence, and therefore the appellant could not have been held to have committed misconduct, cannot be accepted. The report made by the enquiry officer would indicate that during the course of enquiry, the statement of the prisoner i.e. Kalu Singh was recorded. This statement indicates that the appellant was not present at the time when he had escaped through the window of Latrine and the appellant had gone to see one of his acquaintances whereas another constable was also not there. In the light of statement made by the prisoner himself, the finding recorded by the disciplinary authority that the appellant had been negligent in performing his duty and his negligence in remaining absent at the place concerned had emboldened the prisoner to escape, cannot be said to be erroneous so as to warrant interference of this Court in the instant appeal.

The plea that the appellant had 22 years of unblemished service career to his credit and therefore the punishment of reduction of pay scale for a period of three years should not have been imposed by the competent authority is devoid of merits. It may be mentioned that as held by the authorities, the appellant was negligent in performing his duties as Head Constable and Incharge

Guard and but for his negligence, it would not have been possible for the prisoner to escape. On the facts and in the circumstances of the case, the concurrent findings of facts reached by the disciplinary authority as well as the appellate authority that the appellant was negligent in performing his duty, this Court is of the opinion that the punishment imposed cannot be regarded as disproportionate so as to warrant interference of this Court in the instant appeal.

It has been rightly held by the learned Single Judge in the impugned judgment that the appellant has been let off with the mild punishment having regard to the magnitude of negligence in performing his duties. On the facts and in the circumstances of the case, this Court is of the opinion that no case is made out by the learned counsel for the appellant to interfere with the punishment of reduction of pay scale for a period of three years imposed upon the appellant.

On reappreciation of the material produced on the record of the petition, this Court is of the opinion that the learned Single Judge was justified in dismissing the petition filed by the appellant. The learned counsel for the appellant has failed to persuade this Court to take a view different than the one which is taken by the learned Single Judge

on appreciation of evidence. Therefore, the appeal which lacks merits, deserves summary dismissal.

For the foregoing reasons, the appeal fails and is summarily dismissed.

[BHANWAROO KHAN],J. [J.M.PANCHAL],ACTG.GJ.

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